IN THE HIGH COURT OF KERALA AT ERNAKULAM

PRESENT :

THE HONOURABLE MR. JUSTICE R.BASANT

MONDAY, THE 13TH AUGUST 2007 / 22ND SRAVANA 1929

Bail Appl..No. 4978 of 2007()

OS.173/2007 of MUNSIF COURT, KANJIRAPPALLY
CRIME NO.24/2007 OF EXCISE RANGE, KANJIRAPPALLY

.....

PETITIONER/ACCUSED

RAJAMMA, AGED 50 YEARS,
RESIDING AT KANNATTU HOUSE,
KOMBUKUTTY, ERUMELY,
KANJIRAPPALLY, KOTTAYAM DISTRICT.

BY ADV. SRI.R.REJI

RESPONDENTS: COMPLAINANT

STATE OF KERALA, REPRESENTED BY THE
PUBLIC PROSECUTOR,
HIGH COURT OF KERALA, REPRESENTING THE
CIRCLE INSPECTOR OF EXCISE, KANJIRAPPALLY.

BY PUBLIC PROSECUTOR SRI.S.U.NAZER

THIS BAIL APPLICATION HAVING COME UP FOR ADMISSION ON 13/08/2007, THE COURT ON THE SAME DAY PASSED THE FOLLOWING:

R.BASANT, J.

B.A.No.4978 of 2007

Dated this the 13th day of August 2007

O R D E R

Application for anticipatory bail. The petitioner, a woman faces allegations under the Kerala Abkari Act. From her house, 15 litres of arrack was allegedly recovered on 03/08/2007. She ran away from the scene of the crime and could not be apprehended. Investigation is in progress. The petitioner apprehends imminent arrest.

2. The learned counsel for the petitioner submits that the petitioner is absolutely innocent. Directions under Section 438 Cr.P.C may be issued in favour of the petitioner, it is prayed.

3. The learned Public Prosecutor opposes the application. The learned Public Prosecutor submits that the petitioner is involved in one earlier crime under the Kerala Abkari Act. There are no circumstances justifying the invocation of the discretion under Section 438 Cr.P.C, submits the learned Public Prosecutor.

4. In the wake of the opposition by the learned Public Prosecutor, even regular bail can be granted to the petitioner

only if this court is in a position to entertain the twin satisfactions under Section 41A of the Kerala Abkari Act. I do not find any features in this case which would justify the invocation of the extraordinary equitable discretion under Section 438 Cr.P.C. This, I am satisfied, is an eminently fit case where the petitioner must resort to the ordinary and regular course of appearing before the investigating officer or the learned Magistrate having jurisdiction and then seek regular bail

5. In the result, this petition is dismissed. Needless to say, if the petitioner surrenders before the investigating officer or the learned Magistrate and applies for bail, after giving sufficient prior notice to the Prosecutor in charge of the case, the learned Magistrate must proceed to pass appropriate orders on merits, in accordance with law and expeditiously.

(R.BASANT, JUDGE)

jsr

// True Copy// PA to Judge

R.BASANT, J.

CRL.M.CNo.

ORDER

21ST DAY OF MAY2007